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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,100	11/09/2004	Shingo Sugihara	121474	6484

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EXAMINER
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STORMER, RUSSELL D

ART UNIT	PAPER NUMBER
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3617

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09/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/511,100

Applicant(s)

SUGIHARA ET AL.

Examiner

Russell D. Stormer

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Drawings***

1. Figures 1A, 1B, and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated.

The addition of the term "Related Art" in the replacement sheets submitted on September 4, 2007 does not convey that the figures show previously known or conventional structures as described in the specification.

See MPEP § 608.02(g).

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the guide skirt body "formed by an annular body" as described on page 9 of the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities:

On page 9, the guide skirt 70 is described as an "annular body," but is not shown as such and the description is believed to be in error.

Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter.

The "engaging portions" of claim 1 lack antecedent basis in the specification.

See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

### ***Claim Rejections - 35 USC § 112***

5. Claims 1, 2, 3, and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 the "engaging portions" are inferentially set forth and it is not clear what these members comprise.

Claim 5 has been amended (in a non-compliant manner) to depend from cancelled claim 4, and therefore claim 5, as it depends from claim 4, is indefinite.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeuchi et al in view of Krolak et al.

Takeuchi et al discloses an endless rubber track for a crawler running device, comprising a belt having a plurality of projections 32, a protruding streak (unlabelled, but clearly shown in figures 2, 3, 5, 6, 7, and 8), and a drive wheel having teeth 16 which engage left and right projections. A guide skirt is not shown.

Krolak et al teaches a scraping member 40 attached to the frame of the vehicle and positioned to scrape the sides of the track. The positioning of the scraper member 40 corresponds to the periphery of the track and would inherently also guide the track

as it is close enough to scrape the track. See figures 1 and 2, and lines 34-55 of column 2 of Krolak et al.

From this teaching it would have been obvious to fix a skirt to the frame of the device of Takeuchi et al adjacent to the track to prevent build-up of mud or debris on the track. The skirt could be called a guide member as it would be set close enough to the track to guide it.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takeuchi et al in view of Krolak et al as applied to claim 1 above, and further in view of Applicants' Admitted Prior Art Figures 1A, 1B, and 2.

Applicants have admitted that a sprocket or drive wheel may have axially extending track lug engagement members such as those shown in figure 1A and 1B, or may have radially projecting teeth to engage the lugs or projections of a rubber crawler as shown in figure 2. Since these features are well-known in the art and are readily substituted for one another, it would have been obvious to substitute a drive wheel having radially extending teeth for the axially extending teeth 32 of Takeuchi et al as this would provide a suitable engagement of the track by the drive wheel and those of ordinary skill in the art could readily choose between the two formations.

### ***Response to Arguments***

Applicant's arguments filed September 4, 2007 have been fully considered but they are not persuasive.

With respect to the objections to the specification, Applicants' arguments that a member having a circular cross section meets the description of "an annular body" is erroneous. The word "annular" is defined as "ring-shaped," not as having a circular cross section. Moreover, the description of on page 10 that the annular body may have a circular cross section clearly distinguishes the annular body from the circular cross section of that body.

Regarding the lack of antecedent basis for the "engaging portions" of claim 1, the fact that figure 5 might show a portion of a tooth 53 engaging a projection 61 at an unlabelled location does not remedy the lack of a description in the specification. It was the specification that was objected to, not the drawings.

With respect to the argument that the modification of Takeuchi et al in view of the teachings of Krolak et al is improper, those of ordinary skill could readily determine how to attach a skirt to the track and frame assembly of Takeuchi with or without modification to any of the elements of Takeuchi et al as necessary. Further, since the drawings of Takeuchi et al merely show exemplary embodiments and are not necessarily to scale, Applicants' arguments that the "would be of such significant magnitude as to render the references unsatisfactory for their intended purpose" is both moot and incorrect. The track assembly of Takeuchi et al would still perform as described, and the skirt applied thereto as taught by Krolak et al would scrape the track as designed.

The argument presented in lines 10-21 of page 7 appear to be nothing more than speculation and opinion. Further, the argument concerning the alleged lack of a

teaching, motivation, or suggestion existing the references is moot inasmuch as this type of argument has been foreclosed by the Supreme Court decision in KSR International Co. v. Teleflex Inc., 82, USPQ2d 1385.

The argument that the scraping member of Krolak is not provided at an outer side of engaging portions of a drive wheel, Krolak does show the scraping member to be "at an outer side of engaging portions of the drive wheel" and the crawler as broadly recited in claim 1. Note that the word "at" is defined as "in, on, or near," and the scraping member of Krolak et al is near the drive wheel; and that the "outer side," and the "engaging portions" are not positively recited.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.




Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (571) 272-6687. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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9/12/07

  
RUSSELL D. STORMER  
PRIMARY EXAMINER 9/12/07